

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed December 21, 2006 ("Office Action"). Claims 1-8, 10, 11, 26 and 27 are pending in the application. The Examiner rejects Claims 1-8, 10, 11, 26 and 27. Applicant respectfully requests reconsideration and allowance of all pending claims.

Claim Rejections - 35 U.S.C. § 102 and § 103

The Examiner rejects Claims 1-3, 7-8, 11 and 26-27 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0024544 A1 to Waight, et al. ("*Waight*"). The Examiner also rejects Claims 4-6 and 10 under 35 U.S.C. 103(a) as being unpatentable over *Waight*.

Applicant respectfully traverses these rejections. In order to advance prosecution in this matter, however, Applicant files herewith a declaration in accordance with 37 C.F.R. §1.131 showing conception of the present invention in this country before the effective filing date of the *Waight* reference of July 30, 2003, and diligence for the less than two months from immediately prior to the effective filing date of the *Waight* reference until the reduction to practice of the present invention, which all occurred in a WTO member country. Therefore, the *Waight* reference cannot be used to reject the claims of Applicant's invention. Applicant respectfully requests reconsideration and allowance of Claims 1-8, 10, 11, 26 and 27.

Applicants respectfully submit that the declaration submitted herewith pursuant to 37 C.F.R. §1.131 is timely presented because it is submitted with a first reply after final rejection for the purpose of overcoming a new ground of rejection. In the alternative, the declaration is timely presented pursuant to 37 C.F.R. 1.116(b) or 37 C.F.R. 1.195. In particular, Applicant's response to the official action dated July 11, 2006 included an amendment of Claim 1 (and Claim 26) to incorporate the subject matter of original Claim 9. Although Claim 9 was rejected on its face in the official action of July 11, 2006, the Examiner did not provide any grounds for this rejection. Indeed, the Examiner did not provide any reasoning for this rejection or any citation to the *Waight* reference in support of this rejection. The subject matter added to Claim 1 (and Claim 26) from Claim 9 was only discussed for the first time by the Examiner in the final office action dated December 21, 2006. The declaration pursuant to 37 C.F.R. §1.131 was not earlier presented, and is therefore presented herewith,

due to the lack of support for the Examiner's rejection of the subject matter in original Claim 9 in the official action dated July 11, 2006, and Applicant's resulting lack of understanding for this ground of rejection prior to the final office action.

CONCLUSION

If there are matters that can be discussed by telephone to further the prosecution of this Application, Applicant invites the Examiner to call the undersigned attorney at (214) 953-6581 at the Examiner's convenience.

Applicant believes that no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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